U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 6 1994

The Honorable George Allen
Governor
Commonwealth of Virginia
State Capitol
Richmond, Virginia 23219

Re: Eastern State Hospital and Hancock Geriatric Center

Dear Governor Allen:

I am writing in reference to our ongoing investigation of the Eastern State Hospital and the Hancock Geriatric Center (hereinafter "Eastern State"), Williamsburg, pursuant to the Civil Rights of Institutionalized Persons Act (hereinafter "CRIPA"), 42 U.S.C. § 1997 et seq. The purpose of this letter is to advise you of the constitutional violations ascertained during this investigation, the supporting facts, and recommended minimum remedial measures.

Patients of state operated psychiatric facilities have a fundamental Fourteenth Amendment due process right to reasonable safety and adequate medical care, including psychiatric services. Youngberg v. Romeo, 457 U.S. 307 (1982). Patients have a right to adequate psychiatric treatment which includes treatment programs designed to protect their liberty interests. Such treatment programs must be sufficient to permit each resident an opportunity to improve or be cured and to function as independently as their psychiatric conditions permit. See, e.g., Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971). Such programs must provide opportunities for patients to acquire and maintain skills that will enable each of them to cope more effectively with the demands of their own person, their environment, and to raise the level of their mental, behavioral, physical, and social efficiency. See, e.g., Gary W. v. Louisiana, 437 F. Supp. 1209, 1219 (E.D. La. 1976).

The facts disclosed during the course of our investigation supporting our findings of unconstitutional conditions are set forth below. These facts are based upon tours conducted by our consultants during May, 1993. The reports of these consultants are being sent to the Commissioner of Mental Health, Mental Retardation and Substance Abuse under separate cover.

I. Patients are being denied adequate psychiatric treatment, including treatment programs.

A. Patient diagnoses are not developed consistent with generally accepted professional standards.

Diagnoses of patients fail to comport with generally accepted professional standards. First, little consideration is given to patient symptoms, history, or cognitive assessments in the development of a diagnosis. Psychiatrists appear to rely primarily upon an interview of the patient. Moreover, to the extent relevant assessments are performed, they are superficial and do not reflect information professionals generally rely upon in utilizing such assessments. For example, for elderly patients calcium levels were not consistently taken even though inadequate amounts of calcium can lead to psychiatric symptoms. Similarly, dementia work-ups are often incomplete due to the absence of neuroimaging studies which can reveal evidence of a tumor, hematoma, or a stroke. Without complete and adequate assessments, a correct diagnosis becomes problematic.

In addition, patients often have inconsistent, unreconciled, diagnoses. For example, while at the facility, one patient had been diagnosed as suffering from a bipolar disorder and, at a later time, as schizophrenic, paranoid type with mild mental retardation. In another case, a patient had been diagnosed at various times as suffering from a schizoaffective disorder, borderline personality disorder, intermittent explosive disorder, and, then, depression. There was no evidence in the record to reconcile these widely varying, conflicting diagnoses. Absent a proper diagnosis, proper treatment is not possible.

Inadequacies in Eastern State's diagnostic procedures, coupled with inadequate assessments, have led to erratic, inconsistent, or inaccurate diagnoses of patients. Although it has been generally accepted in the psychiatric profession for many years that treatment decisions, including diagnoses, should be developed utilizing a multi-disciplinary approach reflecting the direct involvement of the array of professionals involved in the treatment of the individual patient, our consulting psychiatrist found little, if any evidence that the multi-disciplinary approach was being followed at Eastern State. In sum, defective diagnostic practices fail to reflect compliance with generally accepted medical standards and result in erroneous diagnoses and inadequate treatment.

B. Treatment plans for patients are inadequate.

Inadequate diagnostic procedures, including the absence of interdisciplinary team involvement, have resulted in treatment plans for patients which fail to meet their needs. The standard of care requires the development of comprehensive individualized plans for patients by a team of treating professionals, including psychiatrists, psychologists, nurses, social workers, various relevant therapists, and direct care workers. The failure to include a competent and qualified psychologist in the development of a patient's treatment plan is a gross departure from generally accepted practice and is unacceptable.

Moreover, our consulting psychiatrist found that those plans in existence do not reflect an integrated treatment approach. The use of medications is not properly integrated with non-drug treatment therapies. In addition, our psychologist found treatment programs to be deficient. Significantly, not all patients have a treatment plan. Our psychologist also determined that the goal of the hospital to provide each patient with 4 hours of psychosocial programming each day is not being met -- and would be inadequate in any event. In addition, he observed a significant number of residents engaging in inappropriate behaviors who did not have behavior management plans, a substantial departure from generally accepted practice.

In sum, treatment programs, including psychosocial programs, recreation, occupational therapy, and other therapy programs are inadequate.

C. Staffing is inadequate to afford adequate treatment programs.

During the course of his review of treatment and other therapeutic activities at Eastern State, our consulting psychologist determined that many patients were not involved in treatment programs due to the absence of adequate staff. For example, he noted entries in records which indicated that patients were not in various activities due to insufficient staff. In addition, he found that various patients were on units more restrictive than their psychiatric conditions warranted due to staffing shortages. Indeed, he found two female patients living on an otherwise all male ward because staff on the female

patients' original living unit was insufficient to protect them. Furthermore, he observed rocking and other stereotypic behaviors in residents which could be addressed by additional staff.

D. In the absence of adequate treatment programs, patients are subjected to unreasonable physical restraint.

Hospital policy permits physical restraint or the use of seclusion, i.e., the placement of a patient alone in a locked room, for up to 8 hours. This policy, especially in light of the absence of any requirement for psychiatric evaluations at acceptable intervals, is professionally unacceptable. Further, physicians' orders for restraint and seclusion are deficient in that they fail to consistently state the behaviors or conditions that would dictate the release of the patient. Our consultant also found the use of vest and wrist restraints in the Hancock Unit to be excessive. Finally, our psychiatrist noted that the seclusion room in Building 12 revealed three dangers: 1) areas where a patient cannot be observed; 2) ceiling fixtures that could facilitate suicide; and 3) unsafe window screens.

II. Medication practices are deficient.

A. Pharmacological treatment fails to comport with professional standards.

Pharmacological treatment at Eastern State is characterized by frequent dose changes, drug changes, drug add-ons, and PRNs ("pro re nata" or as needed), absent a professionally required evaluation of patient need, including an appropriate assessment of the use of particular drugs. Our consultant found unacceptable polypharmacy, the use of drugs where there was no professionally acceptable justification for their use, inappropriate dosages, and other deficient practices.

Psychiatrists at the facility rarely, if ever, devise a psychopharmacological plan for a patient and then evaluate drug effects at appropriate intervals. According to our psychiatrist, this leads to the chronic, unnecessary administration of psychotropic drugs, including drugs which have not proved effective. It is common practice at Eastern State to simply add drugs when the patient fails to respond to the current drug therapy -- a professionally unjustifiable practice -- resulting in inappropriate polypharmacy. For example, a patient on eight

psychotropic medications suffered a cardiac arrest. The cardiologist at the facility determined that the cardiac arrest was caused by the multiple medications. Our psychiatrist estimated that at least a quarter of all patients in the facility are receiving unnecessary drugs. In addition, the lack of systematic medication practices has led to inappropriate polypharmacy as well as to an inappropriately high rate of PRN use of medication.

B. Monitoring of drug usage is deficient.

Monitoring of drug treatment is deficient in at least two respects. First, blood level monitoring of psychotropic medication is untimely or not done at all. For example, when lithium blood levels were finally taken for one patient after an unreasonable delay, his levels were in the toxic range. In those cases where the levels are taken, physicians often fail to act upon the results. For example, when a patient's level was not in the presumed therapeutic range, no action was taken to increase the medication or change to a different drug.

In addition, monitoring of side effects of psychotropic medications is not performed adequately. Although this problem was noted throughout the facility, it was particularly acute in the Hancock Unit housing elderly patients. Generally, side effects in elderly persons may be more acute due to increased pharmacosensivity to drugs. A major side effect of many psychoactive medications is a drop in blood pressure upon standing which may cause dizziness, a particular hazard for elderly persons who may already be susceptible to falling. Yet, there is no indication in any patient record that this common side effect of psychotropic drugs is being monitored. Moreover, there was no evidence of postural blood pressures or electrocardiograms for elderly patients at varying dosage levels to evaluate the effects of the medication on general health.

Finally, the reporting of adverse drug indications appears deficient. Eastern State's records indicate that only two adverse drug reactions are reported per month. However, our psychiatrist observed that given the present scope of use of psychotropic medication at the facility, the system for reporting adverse drug reactions is inadequate.

In sum, our consultant determined that the use and monitoring of psychotropic drugs represent a significant departure from generally accepted practice, expose patients to

harm, and particularly threaten the elderly patients of the Hancock Unit.

III. General medical care is inadequate.

Our consultant concluded based upon a review of patient charts and interviews of staff that medical staff fail to respond in a timely manner to the serious medical needs of patients. The failure to intervene in a timely manner ranges from such things as the failure to follow-up abnormal lab reports, adjust medications for patients at risk of suicide, perform lab tests when ordered, or act when patients exhibit severe weight loss, to situations where patients are not transferred to general hospital facilities when necessary. Our consultant also found excessive mortality due to choking and aspiration. Slow responses in evaluating serious medical problems place patients at grave risk.

Although Eastern State has a protocol in place for evaluating geriatric patients with a history of falls, physicians do not consistently participate in such evaluations. Our consultant found numerous cases where a patient was confined to a gerichair for unsteadiness but no evaluation or assessment had been done by a physician as to the cause. Especially where, as here, patients already at risk of falling are prescribed drugs where unsteadiness is a recognized side effect, the failure to determine the reasons for their unsteadiness poses a significant threat to their health and well-being.

Finally, physician coverage on nights and weekends is inadequate. Presently, one physician is on-site and one is on-call during these periods of time. Neither physician, however, is necessarily a psychiatrist and, as a result, there are significant intervals of time where no psychiatrist is on-duty or on-call. Moreover, having only one physician on duty for such periods of time is likewise inadequate in light of the size of the population and their complex medical and psychiatric problems. In addition, due to the lack of psychiatrists, general physicians serve as psychiatrists in the Hancock Unit -- a significant departure from generally accepted professional practice.

IV. Fire safety precautions are inadequate.

Although a number of systems are in place to ensure the safety and evacuation of patients in the event of fire, we noted the absence of smoke detectors in the old wing of the hospital.

This is a serious deficiency which needs to be remedied in order to provide proper, early warning of any fire.

V. Minimum remedial measures

The following measures need to be implemented at Eastern State in order to protect the constitutional rights of patients confined there.

A. Psychiatric care:

1. Evaluate or assess each patient consistent with generally accepted psychiatric standards to develop an appropriate, accurate diagnosis.

2. Based upon an appropriate diagnosis, develop through a multi, inter-disciplinary approach a professionally based treatment program. Such programs must be sufficient to provide each patient a reasonable opportunity to be cured, improve, or function as normally as their psychiatric condition permits.

3. Hire, train, and maintain an appropriate number of both professional and direct care staff to implement such programs, monitor progress, and modify such plans, as appropriate.

4. Revise seclusion and restraint policies to comport with generally accepted psychiatric standards; modify seclusion rooms, as necessary, to ensure reasonable safety.

B. Medication practices:

1. Evaluate the drug regimen of each patient to ensure compliance with generally accepted psychiatric standards; develop a psychopharmacological plan for each patient; ensure that the use of all drugs is professionally justified; eliminate intra-class polypharmacy.

2. Develop and implement a professionally based system to monitor the use of all psychoactive medication, including timely blood-levels, general monitoring of side-effects, and reporting and responding to adverse drug indications.

C. General medical:

1. Develop and implement an overall system of medical care which is sufficient to respond to the medical needs of all patients in a timely manner.

2. Hire and retain additional physicians and psychiatrists to ensure appropriate physician coverage at all times; specifically have a psychiatrist on duty at the hospital at all times and assign sufficient psychiatrists to the Hancock Unit to ensure adequate psychiatric treatment.

3. Ensure that geriatric patients at risk of falls are adequately evaluated by a physician.

D. Fire Safety:

Install smoke detectors in the old wing of Eastern State Hospital.

E. Re-organization of hospital and services:

While our consultants recognized that the current management of the facility is striving to improve conditions, we must note that the facility as a whole represents an antiquated, outmoded instrument for caring for individuals with mental illness. The facility fails to provide patients treatment in an environment that permits contacts with the rest of society and mainstream social institutions, demands independent functioning and permits the exercise of judgment, and contact with family members. In re-organizing Eastern State to implement the remedies outlined above, state officials must act to (1) structure the hospital to serve as an acute care facility for individuals requiring evaluation and stabilization and (2) design and expand, as appropriate, community-based mental health services to serve most other patients.

Our consultants concluded that, with some exceptions, the facility did not provide nor seek to provide more than basic custodial care. Treatment programs, an appropriate therapeutic environment, and other activities needed to provide opportunities to patients to be cured or improve their mental condition simply did not exist. In these circumstances, immediate steps need to be taken to develop a plan which will, as outlined above, materially alter the operation of the hospital and develop

alternate, community based services which offer a reasonable promise of protecting the liberty interests of patients on the most cost efficient basis.

Pursuant to CRIPA, the Attorney General may initiate a lawsuit to correct deficiencies at an institution or otherwise act to protect the rights of patients 49 days after appropriate officials have been notified of the relevant violations of law. 42 U.S.C. § 1997b(a)(1). Therefore, we anticipate hearing from you as soon as possible and not later than 49 days after the date of this letter with any response you may have to our findings and a description of the specific steps you have taken or intend to take on both a long and short term basis to implement the remedies identified in this letter. If you do not respond within the designated time period, we will consider initiating an action against your jurisdiction to remedy the unconstitutional conditions we have identified. In your response, please indicate your willingness to enter into a judicially enforceable agreement to memorialize any agreement we may subsequently reach in this matter.

We look forward to working with you to resolve this matter in a reasonable and practical manner. If you or any member of your staff has any questions, please feel free to call David Deutsch or Judy Preston, the lawyers assigned to this matter, at (202) 514-6270 or 514-6258, respectively.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable James S. Gilmore
Attorney General
Commonwealth of Virginia

Mr. King E. Davis
Commissioner
Department of Mental Health, Mental Retardation
and Substance Abuse

Mr. John M. Favret
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Eastern State Hospital

Helen F. Fahey, Esquire
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